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PRIORITY THEMES

EQUALITY: ELIMINATION OF DE JURE AND DE FACTO DISCRIMINATION AGAINST WOMEN

Report of the Secretary-General

Summary

The Commission on the Status of Women, at its thirty-first session in 1987, selected the issue of the elimination of de jure and de facto discrimination against women as the priority theme in the area of equality for consideration at its thirty-sixth session. While considerable progress has been achieved in eliminating de jure discrimination, less has been made in eliminating de facto discrimination. Many States are beginning to make use of positive action as a method of reducing the gap between discrimination in law and in practice. Certain measures, based on the need to address the present-day consequenccs of past discrimination that prevent women from fully exercising their rights, have been adopted. The present document describes those measures and draws conclusions about the factors involved in their successful implementation.

*E/CN.6/1992/1.

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INTRODUCTION

1. The Commission on the Status of Women, at its thirty-first session in 1987, selected the issue of the elimination of de jure and de facto discrimination against women as the priority theme in the area of equality for consideration at its thirty-sixth session. This decision was subsequently endorsed by the Economic and Social Council in its resolution 1987/24 of 26 May 1987.

2. Under article 1 of the Convention on the Elimination of All Forms of Discrimination against Women, discrimination is defined as:

> "Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

3. The report centres on the gap between the elimination of de jure discrimination and the continuing existence of de facto discrimination and on measures that could be taken to accelerate the reduction of that gap. Information on de facto inequality is drawn from United Nations statistics, while information on the measures taken is drawn from an analysis of the reports of 70 States parties to the Convention as well as studies conducted under intergovernmental auspices.

I. CONCLUSIONS AND RECOMMENDATIONS

4. Despite considerable progress in eliminating legal discrimination, as indicated by the widespread acceptance of the norms set out in the Convention on the Elimination of All Forms of Discrimination against Women, discrimination still exists in practice in all countries, as shown by statistics on the ratio of women to men in education, the labour force and decision-making positions.

5. There is a clear recognition that if discrimination is to be reduced or eliminated, temporary measures such as those foreseen in article 4, paragraph 1, of the Convention may be necessary to alleviate the effects of past discrimination, and to redress the imbalance between men and women in their access to different opportunities. An analysis of information provided by State parties to the Convention, as well as other studies, shows that a number of countries have made efforts to implement lawful measures to correct de facto inequalities by giving consideration to the current disadvantages inherent in the position of women that are a result of past discrimination. By addressing those present-day consequences of past discrimination that prevent the full exercise by women of their equal rights, positive action (or affirmative action, as it is termed in some countries) policies have been implemented as temporary measures aimed at reducing the imbalance.

6. In the present context, positive action is not in itself discriminatory; rather, it promotes equality. Mostly, however, the policies have been implemented in developed countries, their use in developing countries being limited usually to political representation. In international instruments and national

practice, positive action already has an accepted status as a temporary measure necessary to permit the implementation of equal rights.

7. Accordingly, Governments should make increasing, but discerning, use of positive action measures.

8. Positive action programmes should be flexible and selective, taking into account specific national objectives and priorities, as well as the specific situation of women within the country, and targeted on the main factors arising from past discrimination that perpetuate discrimination. Some measures should seek to eliminate or to counteract prejudicial attitudes towards women in social life. Others should seek: (a) to give them access to wider varieties of education, vocational training and employment opportunities; (b) to ensure their access to credit, land and technology; (c) to foster greater sharing of family and social responsibilities between men and women; and (d) to promote women's active participation in economic and political decision-making.

9. Governments should consider taking a number of measures that have been found effective in implementing the positive action programmes in different countries.

10. Governments should publicly declare their commitment to a policy of providing equal opportunities, especially at the highest level.

11. Governments should undertake a diagnosis, making use of national machinery for the advancement of women, in order to identify and evaluate existing inequalities that can be attributed to past discrimination. In employment, for example, they should compile accurate data about the actual and potential workforce, including information on salaries, grades, qualifications, age and years of service, disaggregated by gender, in such a way that it is possible to determine whether women and men have similar pay and career prospects. From this, an order of priorities should be determined in accordance with the needs identified.

12. Governments should set targets and, if desirable, quotas, as well as define specific dates by which those targets should be met.

13. Governments should consider establishing an institution or appointing an executive to supervise or monitor the positive action effort. The tasks should include the organizing of feedback from, and the monitoring of, ongoing programmes and could include establishing bodies for processing appeals and settling disputes.

II. EXTENT OF DE JURE AND DE FACTO DISCRIMINATION AGAINST WOMEN

14. In Economic and Social Council resolution 1990/15 on the recommendations and conclusions arising from the first review and appraisal of the implementation of the Nairobi Forward-looking Strategies for the Advancement of Women to the year 2000, 1/ it was stated that:

> "The interdependence of the different political and social sectors on the one hand, and the legal and social situation on the other, needs to be recognized. However, de jure equality

constitutes only the first step towards de facto equality. Most countries have enacted legal measures to ensure that women have equal opportunities before the law, that is de jure equality. But de facto as well as de jure discrimination continues and visible political and economic commitment by Governments and non-governmental organizations will be required to eliminate it. One obstacle to eliminating de facto discrimination is that most women and men are not aware of women's legal rights or do not fully understand the legal and administrative systems through which they must be implemented. Some affirmative action measures require legal bases which still need to be created."

A. De jure discrimination

15. Adherence to the Convention on the Elimination of All Forms of Discrimination against Women is an indicator of national commitment to the elimination of discrimination in law and in practice. A large majority of countries are either States parties to the Convention or signatories. On 15 January 1992, there were 111 States parties to the Convention; however, over 60 States had yet to become parties. It should be noted, however, that many of the States that were not yet parties to it had made significant changes in their legislation to eliminate de jure discrimination, as shown in the national reports that were part of the first review and appraisal of the Nairobi Forward-looking Strategies for the Advancement of Women (E/CN.6/1990/5, para. 2).

16. Article 2 of the Convention provides that States parties should "embody the principle of equality of men and women in their national constitutions or other appropriate legislature if not yet incorporated therein ...". An analysis of the reports presented to the Committee on the Elimination of Discrimination against Women shows that almost all States parties to the Convention have appropriate provisions in their national legislation. The constitutions of some countries simply refer to the general principle that all persons are equal before the law and that discrimination on the grounds of sex, race and religion is prohibited. A number of countries, especially in Europe, have adopted general legislation on sexual equality and some have adopted specific legislation on equal opportunity in education, employment, social security and political life, as well as on family and criminal law. The area best covered by such legislation is that of labour, including access to education, employment, training and equal treatment at the workplace, including equal pay.

B. De facto discrimination

17. Discrimination still exists in practice in all countries, regardless of their level of development or the legal provisions they have made to eliminate it. With the removal of its legal basis, discrimination has often become more subtle. This discrimination can be either direct or indirect. Direct discrimination is usually visible and is often considered to be intentional; however, it can also occur when stereotypes are applied unconsciously. For the individual against whom discrimination is practised, it does not matter whether such exclusion is intentional or not, since the consequences will be the same.

18. Indirect discrimination can be the result of social and economic policies and practices that were intended to be gender-neutral but are discriminatory in their effects, especially when they perpetuate the consequences of past discriminatory practices. Even when rules, practices and decisions are applied

universally and seemingly without discrimination, the very assumption of neutrality of effect can form the basis for discrimination. For example, in employment, many rules and practices are based on the assumption that all workers have the same lifestyle, based on a male model (who is not pregnant and not responsible for household duties) and, as a result, work and working life in the sense of a career are organized in accordance with this rationale.

19. Comparable international statistics permit a measurement of women's unequal de facto situation in relation to that of men. A consequence of the United Nations Decade for Women: Equality, Development and Peace, 1976-1985, has been the development of such statistics, which are assembled by the Statistical Office of the United Nations in its Women's Indicators and Statistics Data Base (WISTAT), and which were published recently. 2/

20. A number of statistical indicators have been seen as particularly useful in measuring women's economic and social participation because of their content and the fact that they are available for most countries. These indicators include women's literacy according to age and the ratios of girls to boys in school enrolment at the primary and secondary levels. They also include the ratio of women to men in different sectors of the economy.

21. The prevalence of illiteracy, worldwide, is greater among women than it is among men regardless of a country's level of development and will become increasingly so. In 1960, the ratio of illiterate women to illiterate men was 14:10; in 1985, it was 17:10. For developed countries, the ratio in 1960 was 18:10 and for 1985, 17:10. For developing countries, the ratios in 1960 and 1985 were 13:10 and 17:10, respectively. 3/ Female illiteracy is a function of age and reflects, in large measure, a past lack of access to education by women, as well as the absence of programmes to promote literacy among adult women.

22. The ratio of girls to boys in school enrolment is an indicator of the extent to which equality in access to education has been achieved. At the first level of education, the ratio worldwide of girls to boys has hardly increased: from 80.4 girls to 100 boys in 1970, to 81.6 girls to 100 boys in 1984. This represents a deficit of over 59 million girls compared with the number that there would be had girls had the same enrolment rates as boys. It should be noted as well that between 1970 and 1984, in Africa and Asia, no progress was observed in the enrolment ratios of girls compared with those of boys. 4/ In Latin America and the Caribbean and in developed countries, an average ratio of parity was achieved in the same period.

23. At the secondary level of education, where intellectual values are instilled as well as skills that permit persons to compete in the labour force, the pattern is also not good. On a world-wide basis, in 1984, there were 80 girls for every 100 boys enrolled in second-level education. In developed countries, since 1975, adjusted gross enrolment ratios (unlike the gross enrolment ratio, the adjusted ratio compares the number of pupils enrolled with the total population in the same age group) have been slightly higher for girls than for boys. In developing countries, girls, who made up half of the school-age population, represented only 38 per cent of the total number of enrolled children in the second level in 1970, and 41 per cent in 1984. Had girls, however, had the same adjusted gross enrolment ratio as boys (i.e. 42.7 per cent instead of 29.7 per cent) in developing countries, there would have been approximately 30 million more girls enrolled at the secondary level. Considerable differences can be observed between the developing countries: in 1984, girls had

reached equality with boys in Latin America and the Caribbean, but made up only 24 per cent of the enrolment in Africa, and 30 per cent in Asia. 4/ This lack of equal opportunity will have a long-term effect on the entire life of women and particularly on their future possibilities for economic and political participation.

24. Training is another crucial issue since women can make a substantial contribution to development if they are trained properly. For developing countries, training in agriculture, forestry and fishing is particularly important because these are critical economic sectors in which women are an important part of the labour force. In 1970, the average ratio of women to men in advanced studies in these fields was 1:10 in all developing regions. By 1984, the situation had improved in developed regions and in Latin America and the Caribbean, reaching a ratio of 1:2, but in Africa, Asia and the Pacific it was still 1:5. Women represent on average only 26 per cent of those enrolled in training for law and business studies in Africa, and 38 per cent of such enrollees in Asia and the Pacific. In all regions, except Africa (where the situation is worse), women represent only 30 per cent of the enrollees for science and engineering. 5/

25. An indicator of equality in women's economic participation is the ratio of women to men in specific economic sectors. This measure is independent of the country's level of development, but shows the extent to which women have the same access to economic activity as men. Figures are available for the total economically active population as well as for the main economic sectors: agriculture, industry and services. In 1980, the share of women among the economically active population was 52 per cent in all sectors of employment, 51 per cent in agriculture, 28 per cent in industry and 59 per cent in services.

26. The extent to which women are actively involved in the political processes of their countries is indicated by their representation in parliament and the higher levels of public decision-making. In general, women's participation in political decision-making is low. Statistics presented in the report on the priority theme of peace show that the average percentage of women among cabinet ministers in 1990 was 4.1 per cent, and the percentage of women among officials at the top four levels of government was 5 per cent. Eighty-three countries still do not have women at ministerial levels. 6/

27. The cost to society of maintaining discrimination is very high. It is reflected primarily in wasted potential, both to the economy and in society. The practice of discrimination prevents individuals from realizing their full potential and sex stereotyping infringes on their freedom of choice and raises the question of whether development or democracy has been achieved.

III. POSITIVE ACTION AS A MEANS OF CLOSING THE GAP

28. Governments have considered or taken a variety of measures to reduce quickly the gap between the elimination of de jure discrimination and the elimination of de facto discrimination. There has been a recognition that the achievement of equality under the law by the elimination of discriminatory provisions will not by itself eliminate discrimination in practice. The concept of equality is expressed in the law mainly in a negative form by the forbidding of discrimination; that is to say, only the current status is taken into account. The effects of past discrimination are usually not considered.

29. The lingering effects of past discrimination, however, can be shown to impede the possibility of women enjoying present-day rights. So it is necessary to combat the effects of past discrimination in order for women to achieve real equality in the exercise of their rights and potential. A dynamic concept of equal opportunities has been developed that implies a shift away from policies that fit people into existing structures, according to traditional assumptions about their abilities, towards policies that permit the development of their potential and skills. When this concept is reflected in lawful measures designed to correct critical de facto inequalities, it is often classified as positive action.

A. What is positive action?

30. States have accepted the principle that special efforts can be undertaken to close the gap between the elimination of de jure and de facto discrimination, as reflected in their adoption of the Convention on the Elimination of All Forms of Discrimination against Women, article 4 of which states that:

> "Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence, the maintenance of unequal or separate standards; these measures shall be discontinued when the main objectives of equality of opportunity and treatment have been achieved."

Article 4 is clarified by article 2 under which States parties agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake to implement a comprehensive set of measures. Other articles of the Convention (3, 5, 6, 7, 8, 10, 11, 12, 13, 14 and 16) state that States parties should take "all appropriate measures".

31. The necessity to take special measures was noted by the Committee on the Elimination of Discrimination against Women at its seventh session in 1988 when, on the basis of its review of States parties' responses to article 4, it adopted general recommendation No. 5 to the effect that:

> "States parties should make more use of temporary special measures such as positive action, preferential treatment or quota systems to advance women's integration into education, the economy, politics and employment."

32. Similarly, the Nairobi Forward-looking Strategies for the Advancement of Women recommend that:

> "Governments that have not yet done so should establish appropriate institutional procedures whereby the application of a revised set of laws and administrative measures may be effectively enforced from the village level up and may be adequately monitored so that individual women may, without obstruction or cost to themselves, seek to have discriminatory treatment redressed. Legislation that concerns women as a group should also be effectively enforced and monitored so that areas of systematic or de facto discrimination against women can be redressed. To this end, positive action policy should be developed." 7/

33. The specific meaning of positive action has not always been clearly stated. General recommendation No. 5 of the Committee on the Elimination of Discrimination against Women uses the terms "positive action", "preferential treatment" and "quota systems" to characterize the types of temporary special measures set out in article 4 of the Convention. The Committee for Equality between Women and Men of the Council of Europe defined positive action in 1979 as "a strategy (action programme) designed to establish de facto equality of chances through measures which make it possible to counteract or correct discrimination resulting from social systems or practices". 8/

34. Judging from usage in the context of the Convention, practice at the national level, and various elaborations at the international level, it is possible to determine the underlying basis for the concept of positive action. It consists, broadly, of measures aimed at combating the current direct and indirect consequences of past discrimination and at creating new practices within the framework of existing gender-neutral legal instruments. It reflects an understanding that social, political and economic structures were often built during a time when discrimination existed and that, without temporary measures to alter those structures, movement towards significant societal objectives such as democracy, freedom of choice and social justice will be unjustifiably slowed. It also reflects an understanding that economic efficiency is impaired by underusing the potential of a large segment of the population.

35. There is also a recognition that if initiatives to eliminate discrimination are to be successful and irreversible, the roots of discrimination must be addressed. Some of those are found in such phenomena as the traditional division of labour within the family and are supported by an interpretation of traditional cultural and religious norms that penetrates other spheres of life. While norms in the private sphere may be outside the realm of public action, addressing their reflection in the structure of employment or in public life can in turn affect the private arrangements that individuals make within their homes. 9/

36. The direct objective of positive action is to encourage the exercise of rights to equal treatment and opportunity in all spheres of life. Positive action programmes are a combination of corrective actions, new practices and promotional measures. They involve identifying and analysing the roots of discrimination and then changing those operational rules or practices that maintain discrimination. They can include not only remedial measures aimed at achieving immediate results, but also alternative non-discriminatory practices that would even eliminate the need for temporary measures.

37. From this basis of understanding, it is possible to propose a more precise meaning of the concept of positive action as it might be reflected in legislative and other policy measures. First, positive action should be designed with the intention of eliminating discrimination and promoting equality; it should not promote discrimination against the other sex. Second, the intention should be to address areas where the present-day consequences of past discrimination can be shown to impede the enjoyment of existing rights. Third, positive action programmes should be directed at those aspects of current social, political and economic structures where it can be expected that temporary measures would remove the consequences of past discrimination. Once the consequences were removed, the measures would be eliminated, being, ipso facto, temporary.

38. In sum, in order to justify the need for a temporary measure of positive action, it is necessary to prove, first, that discrimination existed in the past. Second, the present-day consequences of such past discrimination must be shown. Third, it must be shown that these present-day consequences impede the enjoyment of current rights. Fourth, it must be shown that the measure proposed will address these present-day consequences.

39. It is generally accepted that non-discrimination in society is a fundamental objective. It follows that measures to assure its achievement in the future can be justified.

B. Legal bases for positive action in international and national practice

40. Several international instruments have been adopted to secure the effective enforcement of laws, and to eliminate de facto discrimination through the implementation of the concept of equal opportunities. The Equal Remuneration Convention (No. 100), 1951, and the Discrimination (Employment and Occupation) Convention (No. 111), 1958, which extended the scope of equal treatment to all forms of discrimination in employment, are two examples. The most comprehensive statement, however, is to be found in the Convention on the Elimination of All Forms of Discrimination against Women.

41. Another example is the Directive of the Council of the European Communities of February 1976 on the implementation of the principle of equal treatment for men and women concerning access to employment, vocational training and promotion and working conditions, which sets a precedent at the intergovernmental level. The Directive is an integral part of European Community law. Article 2, paragraph 4, authorizes Member States to take measures of positive action in order to promote equality of opportunities in the specific fields covered by the Directive.

42. A number of precedents for positive action can be found in national legal practice. A review of the reports of States parties to the Convention on the Elimination of All Forms of Discrimination against Women suggests the variety of approaches that exists.

43. A few States recognize positive action in their constitutions. In the Constitution of Greece, article 116, paragraph 2, read in conjunction with articles 4 and 28, can be interpreted as establishing the lawfulness of positive action. In Sweden, article 16 of chapter 2 of the Instrument of Government can be similarly interpreted. 10/

44. There is a variety of other approaches in law. Some countries adopt texts on positive action as part of general laws relating to the equality of opportunity. Other countries expressly recognize the lawfulness of positive action in special legislation concerning the problem of employment. Still other countries authorize positive action by law in limited fields. There are countries in which positive action requires prior authorization because it is seen as a departure from the principle of equality between the sexes. In some countries, while there is no provision for positive action in national legislation or government decrees, decisions to initiate positive action programmes have been taken by a public authority or regional government. Finally, there are countries where there is no legislative framework for positive action either at the national level (as an act of parliament or

government decree) or at the regional or local level, but where steps have been taken in the public or private sector.*

45. In addition to a legal framework, it has been found that Governments should have both the authority and the effective power to implement positive action programmes. A number of Governments have found that special institutions are useful, including both the traditional arenas for reaching political decisions and ad hoc institutional machinery set up to establish, support, develop and monitor equality policy in practice (such as equality councils, parliamentary committees, ministries or bureaux for women's affairs, party organs and trade unions). Apart from government machinery, other decision-making bodies can play a decisive role in applying equality policies in the field of employment and training. However, efforts should be made to interest the entire public administration. 11/

C. National practice in implementing positive action

46. In examining the responses of States parties regarding article 4 of the Convention, it has to be borne in mind that the article also has a provision concerning the protection of maternity. Article 4, paragraph 2, of the Convention states that:

> "Adoption by States parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory."

Half of the States parties reporting under article 4 restricted themselves to the protective clause and did not report on special measures to accelerate de facto equality between men and women. Of the 70 countries that presented reports to the Committee on the Elimination of Discrimination against Women, only 19 reported on positive action programmes. Another third reported only on protective measures and the remaining third provided no information concerning implementation of article 4 of the Convention.

47. It should be noted that the protective measures mentioned in article 4 are not the same as the temporary measures designed to achieve de facto equality. The issue of protective measures is based on a premise that women need special care because of their reproductive functions; however, while this is often expressed specifically in terms of maternity (e.g. allowing women to have maternity leave of a certain length without an equivalent parental leave for women), it can lead to discrimination in practice when applied to women as a group. In some cases it has involved prohibition of women's entry into certain types of activity on the grounds that the work would be too dangerous (e.g. prohibiting night work or work in underground mines).

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*The typology summarizes the analysis made by Eliane Vogel-Polsky in "Positive action and the constitutional and legislative hindrances to its implementation in the member states of the Council of Europe", Strasbourg, 1989, pp. 29-38, and by Andrée Michel in "Positive action for the benefit of women: preliminary study", commissioned by the Council of Europe, Strasbourg, 1986, on the basis of a questionnaire concerning positive action, and information contained in reports presented by States parties to the Convention on the Elimination of All Forms of Discrimination against Women.

48. Such measures may in fact put women at a disadvantage by limiting their education and employment opportunities and confirming a traditional division of labour, thereby reinforcing their subordinate position. To avoid this, protective measures concerning women can be justified only where women's very low status has placed them in occupations where they are at greater risk than men and only until there is some evidence of an improvement in the status of women. Even differential treatment relating to maternity protection should be set within a legal framework that recognizes the shared responsibilities between men and women in child-rearing.

49. Reporting by States parties suggests that positive action programmes are being implemented in a number of countries in education and training, employment and political participation and have had a positive impact on the advancement of women, as shown below, according to the type of programme.

1. Programmes in education and training

50. In Sweden, the Government Bill (1987/88:105) on Equality Policy to the middle of the 1990s foresaw the changing of a situation whereby there was an unequal distribution of the sexes among pupils and students, postulating that neither sex should have less than a representation of 40 per cent in any form of education. At the same time, the Government initiated scientific research where textbooks would be examined from a gender perspective. Campaigns aimed at increasing awareness about sex stereotypes have been launched.

51. Positive action to remove traditional stereotypes from school textbooks has been taken in many European countries, including Austria, Belgium, France, Germany and Portugal.

52. In Ireland, section 15 of the Employment Equality Act (1977) provides that it shall not be unlawful for any person to arrange for, or to provide training for, persons of a particular sex in a type, form or category of work in which either no, or an insignificant number of, persons of that sex have been engaged. As women are predominantly concentrated in traditionally female occupations, it has been found important to encourage them to enter non-traditional occupations in order to break these stereotypes. Among the countries that reported on this aspect were Australia, Austria, New Zealand, Norway, Sweden and the United Kingdom of Great Britain and Northern Ireland, which envisage special programmes oriented towards encouraging women to enter non-traditional occupations or training.

53. In Ireland, for example, in 1975, the Irish Industrial Training Authority adopted an equal opportunities policy, which confirms its commitment to afford equal access to training for all on the basis of individual merit without regard to gender or any other factor. Results were reported to be encouraging. In 1971, 5 per cent of the trainees were women and, in 1986, women accounted for 34 per cent of the trainees. 12/ The Ministry of State for Women's Affairs has also carried out a programme of activities aimed at fostering a wider appreciation of women's entrepreneurial potential by means of a Women in Business Enterprise campaign. Its central feature is the Business Consultancy Service, which is offered to women free of charge nationwide.

54. This programme of activities has resulted in a heightened awareness of women's entrepreneurial potential amongst women themselves, the media and key Irish agencies. The main agencies have experienced a substantial increase over a two-year period in the numbers of women applying for and receiving assistance

under various financial and technical assistance programmes designed to assist entrepreneurs. For example, in 1984, less than 3 per cent of the grants provided by the Industrial Development Authority under its Small Industries Programme went to businesses owned by women. Just two years later, this figure had increased to 12 per cent.

55. Similar pilot programmes have been conducted by federal, provincial and local government units in Germany, as well as in Belgium at the regional level. In Belgium, 90 per cent of the women attending such programmes found a job after completing them.

56. The role of the State in implementing positive action programmes in education and training has also been exercised by the public financing of training measures. In Italy, it was reported that parliament had considered a bill that would provide for the funding of positive action programmes carried out by official training agencies, and that stated that a certain percentage of the vocational training budget must be set aside for schemes to benefit women. In the first year, the quota was to be fixed at 10 per cent, but the target would thereafter be decided each year by an interministerial committee. 13/

57. In France, since 1983, 21 plans for vocational equality have been approved. The State renders financial assistance for training, promotion and labour organization activities conducted in connection with these plans. This assistance includes 50 per cent of the cost of training, 50 per cent of the other costs incurred in implementing the plan concerned, and 30 per cent of the total salaries paid to employees during the period assigned to training. Analysis of the implementation of these plans has revealed that enterprises that adopted these plans, although highly diverse in activity and size, were all in need of radical technical and organizational change and contained a high proportion of women concentrated in low- or medium-skilled jobs and administrative posts. Almost all the enterprises, through these plans, managed to face the challenge of market competition, reduce a previous inequality and restore confidence to a large number of women who have acquired a degree of independence and taken various forms of initiative.

2. Programmes in employment

58. National experiments in the sphere of employment have been carried out mainly in Canada, the United States of America, and Western European countries. The United States has the longest experience of implementing positive action, where it is more commonly known as affirmative action. These experiments have had an impact on both theory and practice in the implementation of similar strategies in Western European countries. The legal framework for the policy of affirmative action in the United States was established by the Equal Pay Act of 1963, the Civil Rights Act of 1964 and the Equal Employment Opportunity Act of 1972. The Equal Opportunity Commission and the Office of Federal Contract Compliance Programs are responsible for the implementation of positive action programmes. Moreover, Executive Order No. 11246 of 1964 obliged contractors to develop positive action plans as a condition for eligibility for federal contracts. In addition, the courts, by invoking Title VII of the Civil Rights Act, have ordered positive action as compensation for damage suffered. These policies have undergone administrative and judicial review since 1981 and continue to be under discussion.

59. In Western European countries, a movement towards the implementation of positive action programmes emerged after 1975. The favourable attitude of the

Council of Ministers of the European Economic Community towards this strategy supported the initiative. In July 1982, a resolution was passed endorsing the new Community action programme on the promotion of equal opportunities for women for the period 1982-1985, which also included measures to ensure equal treatment and the promotion of equal opportunities for men and women through positive action programmes. The resolution called upon the public sector to set an example. 14/ In 1984, the Council adopted a recommendation on the promotion of positive action for women. 15/ This policy was confirmed in the third medium-term Community action programme on equal opportunities for women and men (1991-1995), which was adopted by the European Community in October 1990. In particular, the social partners were invited to make equal opportunity a major issue of collective bargaining by integrating positive action programmes into their domains and sectors. This was recognized in Council Resolution of 21 May 1991. 16/

(a) Public sector

60. Employment is an area where the application of positive action programmes brings particularly good results. In both the public and private sectors, the State can play an important role, although there are certain differences in public policy.

61. In the public sector, the State can play a compensatory role through public finance or public employment. For example, it can create additional jobs for women. In Greece, in 1983, with the support of the Council for the Equality of the Sexes and latterly of the General Secretariat for Equality, the first agro-tourism cooperative was set up on the island of Mytilene in the Aegean with the aim of creating new jobs for women.

62. In France, in 1987, public authorities experimented with the introduction of mixed job contracts at enterprises with fewer than 200 employees. These contracts cover the appointment, transfer and promotion of women within a trade or skill where 80 per cent of the existing employees are men. In 1987, some 50 contracts, and in 1988 some 100 contracts, were concluded. In 1989, a total of 146 contracts were signed, of which 135 resulted in promotions and nine in appointments. These contracts were reported to have been well received in the labour world, and enterprises were attracted by the pragmatic nature of the approach to vocational equality.

63. In Austria, in accordance with the Decree of 22 January 1980, public authorities have taken a number of steps within the framework of positive action programmes to promote equal opportunities for women in the civil service. 17/ Similar programmes have been started in France and Belgium.

64. The State can also influence recruitment procedures in education, training and employment, as well as pay or promotion. For example, modification of recruitment procedures should ensure that the criteria by which candidates are to be judged are job-related (in the case of employment) or subject-related (in the case of education and training), that no extraneous criteria are introduced that might prejudice women's chances (such as, in particular, questions about their marital status or number of dependants), and that both sexes are represented on selection committees. Criteria that may indirectly discriminate against women include physical characteristics, length of service, geographical mobility, hours of work, maximum age restrictions and union membership. The same principles are applied to promotion and career policies also.

65. In France, according to Act No.82-830 of 7 May 1982, women are eligible for recruitment for jobs in all branches of the public sector. Public service departments have received special instructions to the effect that, in job descriptions, mention should be avoided of any features likely to discourage potential male or female applicants; that both sexes should be represented on selection boards; that applications from women for positions of responsibility should be encouraged and invited; and that sufficiently diversified promotion criteria to ensure real equality of opportunity should be established. The lowest salaries, which seem to be an almost exclusively female "prerogative", have been raised and many permanent appointments made. 18/

66. In Viet Nam a policy has been adopted to give priority to women for promotion.

67. In Norway, in 1981, the Government adopted certain quantitative objectives in the form of an equality policy. Whenever one sex has less than a 40 per cent representation at any grade, preference in recruitment must be given to members of the underrepresented sex when several applicants with equal qualifications are being considered for a vacancy.

68. In the United Kingdom, experiments have taken place at the local government level. The results achieved by many local authorities have shown that where there is a strong political will to achieve equality of opportunity, the necessary institutions, laws and psychological and sociological climate already exist and can be fully used. The positive action programmes at the local level have been concerned with structures and mentalities. A common feature of the equal opportunity policies adopted by various municipal authorities or public services has been that their strategy is directed towards four major structural problems: personnel policy, management procedures and methods, internal organizational structures, and the segregation of functions by sex. The strategy involves significant changes in recruitment and selection procedures, in training, and in promotion and career policies.

69. Since almost two out of five economically active women in the United Kingdom are working part-time and mostly at unskilled and low-paid jobs, local authorities have adopted special measures to give access to higher positions and grades to part-time workers or those sharing a job. Some of the borough councils have gone even further: making all positions, even the highest, open to job-sharing arrangements. Exceptions were permitted only for valid reasons.

70. Actions designed to change mentalities and attitudes have been aimed at three target groups: the people in charge of, and responsible for, implementing the programmes, the women themselves, and the trade unions. For the first group, the following techniques are used: seminars or workshops on legislation, methods of promoting equality of opportunity and role-playing techniques/exercises such as chairing meetings, leading discussions groups, preparing employees to work with a more balanced distribution of the sexes at senior levels or even working under the authority of a woman. The work among women themselves includes the organization of women's groups and discussions on the issues. Women receive a half-day off every six days to discuss the issues. The trade unions are given responsibility for providing special training courses for women and encouraging women to play a more active part in trade union bodies. 19/

71. In order to monitor and evaluate the implementation of positive action programmes, certain institutions have been found useful, including special

commissions, committees or ombudsmen for anti-discrimination policies at different levels of decision-making. Important features include the ability to support individual lawsuits or to initiate legal actions in their own right. Such institutions need adequate resources and effective sanctions.

72. In Australia, in 1986, the Affirmative Action (Equal Employment Opportunities for Women) Act was passed. Within the framework of the Act, an Affirmative Action Agency was established as a statutory body within the Industrial Relations portfolio to assist and advise employees to develop affirmative action programmes, to monitor and evaluate these programmes, to undertake research and education programmes, and to review the effectiveness of the Act. According to the estimates of the Agency, by the end of the 1980s, 2,605 private-sector organizations were covered by the Act. 20/

73. In Canada, the Employment and Immigration Commission has an Affirmative Action Directorate, whose chief function is to promote the adoption, on a voluntary basis, of affirmative action plans by private-sector firms.

74. The extent to which direct action in the public sector can have an impact on society as a whole depends on the degree to which the public sector is a major factor in employment and norm-setting. In any case, the public sector can exemplify the implementation of positive action programmes. In general, the implementation of the programmes is voluntary, although certain forms of encouragement might be given, especially in the private sector.

(b) Private sector

75. In the private sector, public policy regarding positive action is usually in the form of encouraging compliance with equality provisions by the introduction of positive incentives or the application of sanctions. Positive incentives can be in the form of financial assistance from public authorities to private firms to implement, for example, occupational equality plans, different forms of subsidies (wage subsidies), tax provisions (for example, total or partial payment for the additional costs involved in hiring women for, or in assigning them to, jobs traditionally held by men and paying them accordingly) or investment allowances. Such policies have been pursued in Greece, Ireland, Italy, Sweden, the United Kingdom and the United States.

76. In Spain, support for the cost of wages has been granted to employers who recruit women to posts or sectors where they have been underrepresented (under an Order of 21 February 1986). 21/ In Greece, the Workforce Employment Agency has subsidized employers taking on new staff by approximately 10 per cent more, if the person employed was a woman.

77. In Norway, equal status subsidies, comprising 25 per cent of the total salary and social costs for a period of six months, have been assigned to employers who employ women in non-traditional occupations. A similar subsidy has been given to those who accept female apprentices. An increased subsidy could be granted for investment in enterprises in rural areas, but only if the enterprise committed itself to employing more women.

78. In France, the State provides financial assistance to businesses that implement model equality-at-work schemes. Such assistance can be as much as 30 per cent of the amount spent in improving working conditions and methods, 30 per cent of the wage bill for the workers being trained under the scheme, and 50 per cent of the other operating costs incurred in carrying out the scheme, in particular training expenses. 22/

79. Positive incentives are more common in practice at the national level than sanctions. Sanctions would take the form of a threat to take action in the future if a desired behaviour was not forthcoming, e.g. the levy of a special tax on employers who were reluctant to hire women for non-traditional occupations. Sanctions require a strong enforcement mechanism, however.

80. Incentives and sanctions can be either short- or long-term. Short-term programmes are not likely to be effective and experiments in Germany, for example, to induce employers to create more part-time jobs for women confirm this view. Short-term programmes, however, require fewer financial resources than long-term ones, and might be efficient where it is necessary to encourage or to reinforce existing trends (e.g. subsidies for firms with good market prospects), but not where a substantial change in traditional behaviour is necessary. In that case, long-term and institutionalized incentives or sanctions are of great importance. The income-tax system, in particular, seems to be an effective instrument for promoting equal opportunity in the long run. Thus, incentives and sanctions should be in effect for a long period and should be complemented by persuasive strategies and administrative promotion, e.g. informational campaigns and personal contacts with firms. 23/

81. It is also possible to influence private firms by making the award of a contract, which is financed directly or indirectly out of public funds, conditional on the firm implementing a positive action programme within a specific timetable. This practice has produced good results in the United Kingdom and the United States, as noted in a number of studies. These demonstrated conclusively that, in the United States, the employment of minorities and women had increased more in federal contractor workplaces than in non-federal contractor ones. In the case of women, the differences were 15.2 per cent for the former as against 2.2 per cent for the latter with even larger differences at the professional level (47 per cent compared with 18 per cent) and in skilled crafts trades (64.5 per cent compared with 4 per cent). 24/ There is also evidence that affirmative action is helping women to move up the career ladder. In 1978, a review of the five largest banks in Cleveland, Ohio, showed that the percentage of women officials and managers had risen during three years by more than 20 per cent. 25/

82. Many indirect gains and changes in climate have been observed. One of the most important gains was the stimulation of training programmes in and out of the employer community, supported by both public and private money, particularly non-traditional training for women in trades and technical and other predominantly male fields. In the United States, Title IX of 1975 attached to the Education Amendments of 1972 (prohibiting sex discrimination in federally funded educational programmes) opened up job training and higher education programmes to which women and girls had previously had little or no access. Women also began to see themselves in broader occupational categories and to seek a greater range of jobs in greater numbers. 26/

83. In Denmark, positive action programmes have been advanced by the launching in June 1982 of a job creation programme for unemployed persons between 18 and 25 years of age. The beneficiaries that are placed in ordinary private-sector jobs must include a number of women proportionate to the overall number of women seeking jobs in the region. 27/

84. Another approach is to require the inclusion of an equality clause in collective agreements. Positive action programmes are easily implemented and are more effective when they are applied as agreements between the Government, the

employer and the trade union concerned, when they suit the needs and possibilities of the employees and employers, and when they are effectively monitored and followed up with adequate resources by the Government, as appropriate.

85. In Sweden, for example, an agreement between the Swedish Employers' Confederation, the Swedish Trade Union Confederation and the Federation of Salaried Employees in the Manufacturing and Service Industries has been concluded to promote equality of opportunity for all private-sector workers (clerical and manual). This collective agreement sets out a range of major objectives for achieving equality and stipulates: "special treatment intended to achieve these objectives shall not be regarded as discriminatory".

86. In Norway also an agreement applicable to the banking sector has been concluded. The Christiana Bank, for example, has adopted a three-year scheme targeted on 5,000 employees of both sexes. 28/

3. Programmes aimed at increasing the number of women at the decision-making levels

87. There is also another policy option with an indirect influence on discriminatory practice. It is increasing the decision-making power of women, thereby giving them the opportunity of articulating their interests.

88. In Austria, programmes to promote women in politics are accompanied by programmes to increase the percentage of women in managerial posts in the civil service and industry. In spite of obstacles, there have been a number of successes. For instance, the Ministry of Agriculture and the regional chambers of agriculture have succeeded in increasing the number of women in rural decision-making bodies, including those at the top level. 29/

89. In Bangladesh, special measures have been taken: a female quota has been introduced in local bodies and in parliament. Efforts have been undertaken in Argentina and Costa Rica to elaborate laws that would include parity quotas in the selection of candidates for office; however, the development of this legislation is still at an early stage and is still being debated.*

90. In Finland, according to the Equality Act adopted in June 1986, both women and men must be elected to all municipal bodies, in addition to governmental committees, so that the representation of both sexes is never below 40 per cent.

91. In Germany, measures have been taken to increase the participation of women in political decision-making, largely by voluntary means. The Green Party (Die Grünen) and the Social Democratic Party of Germany (SPD) have both introduced a system of quotas. In 1986, the Greens incorporated a provision into their constitution according to which at least half of the representatives of all bodies and organs of the federal association of the party must be women. In 1988, the SPD changed its organizational statutes to the effect that at least 40 per cent of either sex must be represented in the offices and

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*Some experiences in the use of this approach to increase the percentage of women in decision-making can be found in the forthcoming United Nations study entitled Women in Politics and Decision-making in the Late Twentieth Century: A United Nations Study (United Nations publication, Sales No. E.91.IV.3).

functions of the party. This regulation is to come into force in several phases up to 1998 and will remain valid until the year 2010. In 1986, the Christian Democratic Union (CDU) and the Free Democratic Party (FDP) intended to bring the proportion of women in their decision-making bodies into line with the size of their female membership.

92. In Sweden, the Bill on Equality Policy has established goals concerning the participation of women in decision-making bodies: by 1992, the promotion of women to the boards of public bodies and to public committees is to be 30 per cent, and by 1995 it is to be 40 per cent; within a ten-year period, these bodies are to be composed equally of both sexes. In 1989, 29 per cent of the representatives on the 123 central boards of governmental agencies were women; (i.e. in three years there had been an increase of 13 per cent). In the regional bodies, the increase was 22 per cent.

4. Advertisement of positive action programmes

93. The importance of publicity and the use of the media as a means of promoting positive action has also been noted. Education and awareness-raising programmes aimed at changing public consciousness, attitudes and behaviour concerning issues of equality are an essential component of positive action programmes in such countries as Norway, Sweden, the United Kingdom and the United States.

94. In Austria, Portugal and Sweden, positive action programmes also include measures aimed at increasing public awareness of the problems of women. The Federal Ministry of Social Affairs in Austria has used films to increase the awareness of the public, especially schoolchildren, and has produced a series of booklets. A survey conducted among schoolchildren suggested that the films dealing with equality and working women were far better received in 1982 than they were in 1978.

D. Targets or quotas as mechanisms within positive action programmes

95. One mechanism for implementing positive action is the use of targets or quotas as a means of enforcing policies. They are necessary in order to provide criteria for assessing the efficiency of a programme and for planning. In order to determine a particular quota or target, management must choose between competing goals and then assess which redistributive effects may reasonably be expected in the short-term and which in the long-term. This is the process of allocating priorities and assessing obstacles. There is a certain difference between quotas and targets and much controversy about that issue. Targets differ from quotas in that the latter are usually mandatory, whereas the former are indicative.

96. Critics have maintained that quotas, as opposed to targets, are inconsistent with the principle of equality and conflict with such norms as free choice and individual justice. Enforcing quotas in employment, for example, might also increase prejudice in that any female employee could be suspected of having been hired because of the quota and not because of her qualifications or performance. This might produce much frustration both among the "preferred" and the "disadvantaged" workers and undermine good work relations in the firm. Furthermore, the formal introduction of quotas might lead to the recruitment and promotion of less skilled persons and make established skilled workers reluctant to transmit their job-specific knowledge to the preferred group.

97. Others argue that quota regulation can be effective in certain situations:

> "(a) Quota rules might be more effective if discrimination is due purely to the existence of social customs which are maintained by different forms of social or economic sanctions. In this case the existence of quotas provides support for those groups who wish to break with discrimination but have not done so because of the risk of losing social reputation or having economic sanctions imposed against them.
>
> "(b) Quota rules might be necessary where the long-term damages due to discrimination are very high [e.g. in the case of primary vocational training]. In such cases, the infringement of individual freedom or, in some cases, individual injustice caused by the enforcement of quotas might be justified from the point of view of social policy. Thus, one can imagine that the actual disadvantages suffered by women in the area of primary vocational training might be compensated for - at least for some time - by quota regulation in that area." 30/

98. There are, however, situations where rigid quotas may serve as ceiling for the further advancement of women. In Belgium, one of the demands of many of the women's sections of political parties was the introduction of quotas. As a result, in the majority of traditional parties, a quota system has been established that guarantees in all cases a minimum presence of women in the party organs. However, having achieved this minimum presence, women's representation has not increased or only very slowly. The situation has stagnated.

99. An alternative might be flexible targets, rather than mandatory quotas, which seem to be more appropriate in the context of positive action programmes. In the United States and, to some extent, in Sweden, most promising models have been developed.

100. In general, the highest efficiency of positive action programmes can be achieved only by a combination of different policies in both the public and private spheres. The development of a policy mix is essential. Different instruments of such an approach should complement each other, so that the weakness or lack of effectiveness of one instrument is compensated for by the strength and effectiveness of another. This also requires the cooperation of different institutional frameworks. The policy mix makes it possible to avoid additional costs. For example, when the State provides training programmes for women re-entering the labour market, there is less need to use incentives for employers to retrain them. When affirmative action groups or commissioners for women are institutionalized at the level of firms, the administrative enforcement of an equal opportunity policy might be less necessary.

Notes

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2/ The World's Women 1970-1990: Trends and Statistics (United Nations publication, Sales No. E.90.XVII.3).

3/ Data Highlights, No. 6, May 1989.

4/ Data Highlights, No.7, May 1989.

5/ The World's Women ..., pp. 47-48.

6/ "Priority themes: Peace: Equal participation in all efforts to promote international cooperation, peace and disarmament: report of the Secretary-General" (E/CN.6/1992/10), para. 25.

7/ Report of the World Conference ..., para. 61.

8/ See Andrée Michel, "Positive action for the benefit of women: preliminary study", commissioned by the Council of Europe, Strasbourg, 1986 (EG (86) 1), p. 4.

9/ Christine Jackson, "Policies and implementation of anti-discrimination strategies", Sex Discrimination and Equal Opportunity: The Labour Market and Employment Policy, Günther Schmid and Renate Weitzel, eds. (Aldershot, Gower Publishing, 1984), p. 195.

10/ Eliane Vogel-Polsky, "Positive action and the constitutional and legislative hindrances to its implementation in the member states of the Council of Europe", study prepared for the European Committee for Equality between Women and Men, Council of Europe, Strasbourg, 1989 (EG (89) 1), p. 29.

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12/ Vogel-Polsky, "Positive action and the constitutional ...", pp. 74-75.

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17/ Michel, op. cit., pp. 10-11.

18/ Eliane Vogel-Polsky, "Positive action programmes for women: 2. Practical application", International Labour Review, vol. 124, No. 4 (July-August 1985), p. 389.

19/ Ibid., pp. 389-392.

20/ Selected Appendices from "Making the Link: Affirmative Action and Industrial Relations" (published jointly by the Affirmative Action Agency and the Labour-Management Studies Foundation, Graduate School of Management, Macquarie University, June 1990), p. 64.

21/ Vogel-Polsky, "Positive action and the constitutional ...", p. 76.

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26/ Ibid., p. 5.

27/ Vogel-Polsky, "Positive action programmes for women: 2. Practical ...", p. 393.

28/ Vogel-Polsky, "Positive action and the constitutional ...", p. 43.

29/ Michel, op. cit., pp. 46-47.

30/ Schmid, loc. cit., p. 291.